

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LG ELECTRONICS U.S.A., INC., LG
ELECTRONICS, INC., & LG ELECTRONICS
MONTERREY MEXICO, S.A., DE, CV,

Plaintiffs,

v.

WHIRLPOOL CORP., WHIRLPOOL
PATENTS CO., WHIRLPOOL
MANUFACTURING CORP., and MAYTAG
CORP.

Defendants.

CIVIL ACTION

Civil Action No. 2:08-cv-1869

HONORABLE JUDGE FAITH S. HOCHBERG

**DECLARATION OF
RICHARD B. HARPER
IN SUPPORT OF
DEFENDANTS' MOTION
TO DISMISS COUNTS FOUR
AND FIVE OF
PLAINTIFFS' COMPLAINT**

Richard B. Harper declares as follows:

1. I am over the age of 18 years old and competent to testify to the matters set forth below. I am an attorney with the law firm of Baker Botts L.L.P., counsel for Defendants Whirlpool Corp., Whirlpool Patents Co., Whirlpool Manufacturing Corp., and Maytag Corp. in this action. I have personal knowledge of the facts set forth herein.

2. This declaration is for the purpose of authenticating certain documents attached hereto that are being filed by Defendants as exhibits to the Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss Counts Four and Five of Plaintiffs' Complaint.

3. Exhibit A is a true and correct copy of Complainants' Motion for Partial Termination Based on Withdrawal of Certain Allegations in the Complaint filed in the U.S. International Trade Commission on May 1, 2008.

4. Exhibit B is a true and correct copy of a letter from Thomas A. Schwinn, Vice President, Maytag Corporation to Thomas L. Jarvis of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., counsel for LG Electronics, Inc., LG Electronics USA, Inc., and LG Electronics Monterrey Mexico, S.A., DE, CV, sent via email on April 31, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

May 1, 2008
Date

By: /s/ Richard B. Harper
Richard B. Harper (RH 5979)

EXHIBIT A

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

In the Matter of

**CERTAIN REFRIGERATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-632

**COMPLAINANTS' MOTION FOR PARTIAL TERMINATION BASED ON
WITHDRAWAL OF CERTAIN ALLEGATIONS IN THE COMPLAINT**

COMPLAINANTS

WHIRLPOOL PATENTS COMPANY
500 Renaissance Drive
Suite 102
St. Joseph, Michigan 49085

WHIRLPOOL MANUFACTURING CORP.
500 Renaissance Drive
Suite 102
St. Joseph, Michigan 49085

WHIRLPOOL CORP.
2000 North M-63
Benton Harbor, Michigan 49022

MAYTAG CORP.
403 West 4th Street North
Newton, Iowa 50208-3026

RESPONDENTS

LG ELECTRONICS, INC.
LG Twin Towers
20 Yeouido-dong
Yeoungdeungpo-gu, Seoul, 150-721
South Korea

LG ELECTRONICS, USA, INC.
1000 Sylvan Ave.
Englewood Cliffs, New Jersey 07632

LG ELECTRONICS MONTERREY
MEXICO, S.A. de C.V.
Av. Industrias 180
Fracc Industrial Pimsa Ote.
66603 Apodaca
Nuevo Leon, Mexico

COUNSEL FOR COMPLAINANTS

Scott F. Partridge
Paul R. Morico
BAKER BOTTS LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas
Telephone: (713) 229-1569
Facsimile: (713) 229-7769

Pursuant to Rule 210.21(a)(1) of the U.S. International Trade Commission's Rules of Practice and Procedure ("Commission Rule 210.21(a)(1)"), 19 C.F.R. §210.21(a)(1), Complainants Whirlpool Patents Company, Whirlpool Manufacturing Corporation, Whirlpool Corporation, Maytag Corporation ("Maytag") (collectively "Complainants"), move for an order partially terminating the pending investigation with respect to U.S. Patents Nos. 6,971,730 and 7,240,980. In support thereof, Complainants will show as follows:

ARGUMENT

On January 23, 2008, Complainants filed a Complaint against Respondents LG Electronics, Inc., LG Electronics, USA, Inc., and LG Electronics Monterrey Mexico, S.A. de C.V. asserting infringement of five U.S. Patents in violation of 9 U.S.C. §1337. Complainants hereby move to terminate the pending investigation partially by withdrawing from their Complaint all allegations relating to U.S. Patent No. 6,971,730 and U.S. Patent No. 7,240,980 (the "'730 and '980 Patents") pursuant to Commission Rule 210.21(a)(1). That Rule provides that

Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(Commission Rule 210.21(a)(1) (emphasis added).)

Under Commission Rule 210.21(a)(1), a "complainant may amend its complaint by withdrawing a patent from an investigation." *Certain Integrated Circuit Chipsets and Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 12, 2000 WL 1073394, at *2 (June 20, 2000) (citing *Certain Dynamic Random Access Memory Controllers and Certain Multi-Layer*

Integrated Circuits as well as Chipsets and Prods. Containing Same, Inv. No. 337-TA-388, Order No. 5 (Nov. 7, 1996)).) Moreover, “[a]s the language of Commission [R]ule 210.21(a)(1) indicates, the rule does not require a showing of good cause for partial termination of an investigation based on withdrawal of certain allegations contained in the complaint.” *Certain Integrated Circuit Chipsets and Prods. Containing Same*, 2000 WL 1073394, at *2 (granting complainant’s motion for partial termination wherein complainant sought to delete a patent from the pending investigation). Instead, absent “extraordinary circumstances,” partial termination of an investigation will be readily granted to a complainant during the prehearing stage of an investigation. *Certain Integrated Repeaters, Switches, Transceivers, and Prods. Containing Same*, Inv. No. 337-TA-435, Order No. 8 (Dec. 28, 2000) (granting motion for withdrawal of allegations relating to a certain patent after finding that there were no extraordinary circumstances warranting denial of the motion); *see also Certain Endodontic Instruments*, Inv. No. 337-TA-610, Order No. 12, 2008 WL 372920, at *1 (February 6, 2008) (same).

The investigation in this matter is in its very early stages. It was instituted just over two months ago, in late February 2008, and the Respondents only answered the Complaint less than two weeks ago. Discovery has just commenced and the hearing is not scheduled to occur until the second week of December 2008.. Therefore, neither the Respondents nor the Commission have expended significant resources with respect to the allegations concerning the '730 and '980 Patents, and no prejudice will result to Respondents as a result of partial termination. Significantly, the withdrawal of the '730 and '980 Patents will simplify the underlying investigation and conserve judicial resources by narrowing the issues to be litigated.

Accordingly, Complainants respectfully move for an order partially terminating the pending investigation with respect to Respondents LG Electronics, Inc., LG Electronics, USA,

Inc., and LG Electronics Monterrey Mexico, S.A. de C.V. as it relates to United States Patents Nos. 6,971,730 and 7,240,980.

Respectfully submitted,

Dated: May 1, 2008

/Paul R. Morico/

Scott F. Partridge
Paul R. Morico
Amanda Woodall
Elizabeth L. Durham
BAKER BOTTS LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1569
Facsimile: (713) 229-7769

Frederick G. Michaud
Kristiana Brugger
BAKER BOTTS LLP
The Warner
1299 Pennsylvania Avenue NW
Washington, DC 20004-2400
Telephone: (202) 639-7716
Facsimile: (202) 585-1039

ATTORNEYS FOR COMPLAINANTS
WHIRLPOOL PATENTS COMPANY,
WHIRLPOOL MANUFACTURING
CORPORATION, WHIRLPOOL CORPORATION,
AND MAYTAG CORPORATION

Certification Pursuant to Ground Rule 3.2

Pursuant to Ground Rule 3.2, Complainants certify that on April 30, 2008, Complainants contacted Respondents LG Electronics, Inc., LG Electronics, USA, Inc., and LG Electronics Monterrey Mexico, S.A. de C.V. (collectively, "Respondents") and the Commission's Investigative Staff concerning Complainants' Motion for Partial Termination Based on Withdrawal of Certain Allegations in Their Complaint.

The Commission Investigative Staff indicated that it is not opposed to Complainants' Motion. As of the filing of the Motion, Complainants had not heard back from Counsel for Respondents concerning Respondents' position regarding Complainants' Motion.

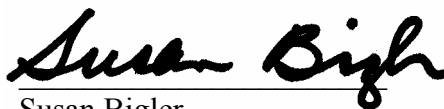
Dated: May 1, 2008

/Paul R. Morico/
Paul R. Morico

CERTIFICATE OF SERVICE

I, hereby certify that on this 1st day of May, 2008, copies of the foregoing Motion to Withdraw were served on the following parties, by the method(s) indicated below:

| <i>U.S. International Trade Commission</i> | | |
|--|------------|--|
| U.S. International Trade Commission The Honorable Marilyn R. Abbott Secretary to the Commission 500 E Street, S.W. Washington, D.C. 20436 | | <input type="checkbox"/> <i>Via</i> First Class Mail <input type="checkbox"/> <i>Via</i> Hand Delivery <input checked="" type="checkbox"/> <i>Via</i> Electronic Filing <input type="checkbox"/> <i>Via</i> Federal Express |
| The Honorable Theodore Essex Administrative Law Judge 500 E Street, S.W., Room 317-H Washington, D.C. 20436 Tamara Lee tamara.lee@usitc.gov | (2 copies) | <input type="checkbox"/> <i>Via</i> First Class Mail <input type="checkbox"/> <i>Via</i> Hand Delivery <input checked="" type="checkbox"/> <i>Via</i> Email <input checked="" type="checkbox"/> <i>Via</i> Federal Express |
| Rett Snotherly, Esquire Investigative Attorney Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E. Street, S.W., Room 401-L Washington, DC 20436 rett.snotherly@usitc.gov | (1 copy) | <input type="checkbox"/> <i>Via</i> First Class Mail <input type="checkbox"/> <i>Via</i> Hand Delivery <input checked="" type="checkbox"/> <i>Via</i> Email <input checked="" type="checkbox"/> <i>Via</i> Federal Express |
| <i>Counsel for Respondents:</i> | | |
| Thomas L. Jarvis Andrew C. Sonu Richard L. Stroup Parmanand K. Sharma Paul C. Goulet Finnegan, Henderson, Farabow, Garrett & Dunner L.L.P. 901 New York Avenue, N.W. Washington, DC 20001-4413 tom.jarvis@finnegan.com andy.sonu@finnegan.com richard.stroup@finnegan.com anand.sharma@finnegan.com paul.goulet@finnegan.com courtesy_LG_632@finnegan.com | (1 copy) | <input type="checkbox"/> <i>Via</i> First Class Mail <input type="checkbox"/> <i>Via</i> Hand Delivery <input checked="" type="checkbox"/> <i>Via</i> Email <input checked="" type="checkbox"/> <i>Via</i> Federal Express |



Susan Bigler
Paralegal



UNITED STATES INTERNATIONAL TRADE COMMISSION



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Document Information

| | |
|------------------------------|--|
| Document Number | 299022 |
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| Document Date | 05/01/2008 |

Investigation Information

Investigation Number: 337-632

| | |
|----------------------------|---|
| Phase | Violation |
| Area of Interest | Sec 337 |
| Investigation Title | Certain Refrigerators and Components Thereof, Inv. No. 337-TA-632 |

Submitter Information

| | |
|----------------------------|--|
| Filed By | Paul Morico |
| Firm / Organization | Baker and Botts |
| Submitted By | morico1 |
| Filed On Behalf Of | Whirlpool Patents Company, Whirlpool Manufacturing Corporation, Whirlpool Corporation and Maytag Corporation |

| Order | Section ID | Filename | Section Title |
|-------|------------|--|--|
| 1 | 361310 | C:\Documents_and_Settings\sbigler\Desktop\Motion_to_Withdraw.pdf | Motion for Partial Termination Based on Withdrawal of Certain Allegations in the Complaint |

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EXHIBIT B

MAYTAG CORPORATION
2000 North M-63
Benton Harbor, MI 49022

April 30, 2008

VIA EMAIL / CONFIRMATION BY FIRST CLASS MAIL

LG ELECTRONICS, INC.
LG ELECTRONICS, USA, INC.
LG ELECTRONICS MONTERREY MEXICO, S.A., DE, CV
c/o Thomas L. Jarvis
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Avenue, NW
Washington, DC 20001-4413
tom.jarvis@finnegan.com

RE: United States Patent Nos. 6,971,730 and 7,240,980

To whom it may concern:

Maytag Corporation hereby covenants itself and all successors in interest to United States Patent Nos. 6,971,730 and 7,240,980 not to sue LG Electronics, Inc., LG Electronics, USA, Inc., or LG Electronics Monterrey Mexico, S.A., DE, CV (collectively "LG Electronics") for any alleged infringement (whether direct or indirect) or violation of any of the claims of United States Patent Nos. 6,971,730 and 7,240,980. Maytag Corporation further hereby covenants itself and all successors in interest to U.S. Patent Nos. 6,971,730 and 7,240,980 not to sue LG Electronics customers, clients, or suppliers for any alleged infringement or violation of any of the claims of United States Patent Nos. 6,971,730 and 7,240,980 for any products supplied by (or to) LG Electronics to (or by) said customers, clients or suppliers.

Very truly yours,



Thomas A. Schwyn
Vice President, Maytag Corporation

cc: Scott F. Partridge
Paul R. Morico